HEAP HUAT RUBBER CO. SDN. BHD.

v.

UNITED OVERSEAS BANK LTD.

HIGH COURT MALAYA, JOHOR BAHRU
LC VOHRAH J
[ORIGINATING MOTION NO. 32-39 OF 1988]
9 MAY 1992

LAND LAW: *Lien-holders' caveat - Whether valid - Caveat not lodged contemporaneous to granting of loan - Whether letter executed by authorised persons - What was the intention when depositing title deed - Burden of proof.*

The applicant applied for the removal or cancellation of a lien-holders' caveat lodged by the respondent in respect of a piece of land. The applicant alleged that the title deed to the said land was deposited with the respondent merely for safe-keeping and no loan was ever granted to the applicant upon deposit of it as evidenced by an undated letter.

The respondent denied receiving this letter. However the respondent produced letter dated 25 June 1985 (LKK1) confirming receipt of the title deed as security for loans granted. This letter was signed by two persons on behalf of the applicant, namely one Ng Siew Kuan, a director of the company and one Michael Ng Eng Choon, not a director but an authorised signatory. The respondent granted credit facilities to the applicant pursuant to three agreements all dated prior to 25 June 1985. The lien-holders' caveat was lodged on 9 August 1986.

Held:

[1] There is nothing in the provisions of s. 281 of the National Land Code (NLC) to prevent the respondent on the basis of LKK1 from applying for entry of a lien-holders' caveat or to suggest that the entry had to be made contemporaneously with the execution of the letter. Forbearance by the lender from insisting on repayment of the overdue loan afforded good consideration for the additional security granted.

[2] The relevant date for determining the intention was not 28 February 1984 but 25 June 1985 when the letter was executed which suggested that the title deed was deposited as additional security for repayment of monies due to the respondent.

[3] At the time when the lien was created by entry of the caveat on 9 August 1986 the restriction imposed by s. 433B of the NLC on a non-citizen or a foreign company had ceased to apply by virtue of s. 3 of the NLC (Amendment) (No. 2) Act 1985 which came into force on 12 September 1985.

[4] LKK1 related merely to the deposit of the title deed outside Malaysia and therefore related to a thing done outside the federation and was consequently exempted from stamp duty.

[5] The distinction between a lien and a charge exists in the NLC and *Paramoo's* case is still good law. Therefore a lien could not be regarded as a charge under the Companies Act.

[Application dismissed with costs.]

Cases referred to:
Eng Mee Yong v. V.Letchumanan [1977] 2 MLJ 212 ***(foll)***
Paramoo v. Zeno Ltd. [1968] 2 MLJ 230 ***(foll)***

Legislation referred to:
Companies Act 1965, s. 108
Contracts Act 1950, s. 24(b)
National Land Code (Amendment) Act 1985, s. 3
National Land Code 1965, ss. 281, 330, 433B(1)(b), 433C
Stamp Ordinance 1949, s. 35

For the applicant - Ho Wee Keong; M/s. Sabarudin Othman & Ho
For the respondent - Ho Thian Cheh; M/s. Ho Thian Cheh & Co.

JUDGMENT

LC Vohrah J:

By this notice of originating motion the applicant, Heap Huat Rubber Co. Sdn. Bhd., applied for the removal or cancellation of a lien-holder's caveat lodged by the respondent, United Overseas Bank Ltd., in respect of land held under Grant No. 25081 for Lot 241 measuring 307A .OR .20P. in the Mukim of Pulai, Johor (the said land) and for the return of the title deed to the said land.

In its affidavit in support of this present application, the applicant alleged that on 9 August 1986 when the lien-holder's caveat was lodged by the respondent no loan was ever granted to the applicant upon deposit of the title deed and that it had deposited the title deed with the defendant merely for safe-keeping as evidenced by an undated letter which is worded as follows:

> Heap Huat Rubber Co. Sdn. Bhd.
> 05-01 & 05-02, 5th Floor, Far Eastern Bank Building,
> No. 156, Cecil Street, Singapore 0106
> Singapore Office: Tel. Nos. 2229111/7 (7 lines)
>
> **Registered Office:**
> 2nd Floor,
> Wisma UMS,
> 10, Jalan Pudu,
> Kuala Lumpur.
>
> The Manager,
> United Overseas Bank Ltd.
> 1 Bonham Street,
> Singapore 0104.
>
> **Attn: Mdm Sim Puay Suang**
>
> Dear Sir,
>
> RE: Lot 241 Mukim of Bandar District of Johor Bahru Under Geran 25081
>
> Further to the meeting between your Mr. Wee Cho Yaw and our Mr. Michael Ng on 22 June 1985, we hereby deposit the title deeds relating to the property listed above for your safe-keeping on the express condition that the said title deeds will be released to us as and when we require them for completing any Sale and Purchase of the said property.
>
> Please acknowledge receipt of this letter and the enclosed title deeds by signing the duplicate of this letter.

Yours faithfully,
Heap Huat Rubber Co. Sdn. Bhd.

Sgd
Director.

The respondent, on the other hand, denied ever having received this letter and appeared from its averments to suggest that it was never written at all. I must in passing observe that it seemed to me rather odd that the applicant should by a letter have deposited the title deed with the respondent for no other reason than for safe-keeping and with a stipulation for its return on request by the depositor. Nevertheless, from the arguments of learned Counsel it appeared very little revolved around the existence of this letter as their arguments centred solely on what appeared to be the respondent's standard letter of confirmation (LKK1) in the respondent's custody. For convenience the letter is reproduced below in full:

Singapore 25 June 1985

United Overseas Bank Ltd.
Singapore

Dear Sirs,

I/We hereby confirm that the title deeds relating to the property described in the Schedule below which I/we have **deposited with you are to remain on deposit with you and be held by you as security for the payment to you on demand of all moneys and liabilities which may now or at any time hereafter be due and/or owing to you by me/us** and/or by ... on current account with you or on any account whatever either alone or jointly with any other person or persons and whether as principal or surety or in any manner whatsoever.

I/We hereby declare that the title deeds and documents deposited with you are all that are in my/our possession and control and that the property is not charged or encumbered in any way whatsoever.

I/We hereby further agree and undertake to execute at my/our own cost and in your favour a legal mortgage covering the said property **as and when required by you to do so.**

To all intents and purposes, the security herein referred to **shall be a continuing security to you** and shall not be affected by reason of any account ceasing to be current but shall ensure ***(sic)*** and be available to you for or on account of the moneys and liabilities aforesaid notwithstanding the terms of any guarantee given to you for the same by me/us, which shall be deemed a separate and additional security to you and also notwithstanding the terms of any additional guarantee by any other person or persons or any other security in whatever form which you now or may hereafter hold or any lien to which you are by law entitled for or in respect of the moneys and liabilities aforesaid.

The Schedule Referred To Above

Lot 241 Mukim of Bandar District of Johor Bahru Under Geran 25081

Yours faithfully,

Heap Huat Rubber Co. Sdn. Bhd.

Heap Huat Rubber Co. Sdn. Bhd.

(Signature)	(Signature)
Ng Siew Kuan	Michael Ng Eng Choon

(Signed) K.R. Krishnan (Signature)
Witness: Pesuruhjaya Sumpah (Chop)
(Commissioner for Oaths) 26 June 1985
Johor Bahru

(Emphasis added)

This letter, as can be seen, was signed by two persons purportedly on behalf of the applicant, namely one Ng Siew Kuan, a director of the company, and one Michael Ng Eng Choon, not a director but an authorised signatory, the signatures of both of whom were witnessed by someone whose indecipherable signature appeared within the circular chop. It was alleged by the respondent that at or about 25 June 1985 the amount which was due and owing by the applicant to the respondent in respect of credit facilities granted by the latter to the former was the sum of RM44,718,656.51 cents or thereabouts. On 9 August 1986 a lien-holder's caveat was lodged by the respondent in Form l9D (LKK3) under the provisions of s. 330 of the National Land Code (the NLC) which provides for the creation and effect of a lien-holder's caveat as a result of any title document having been deposited as a security for a loan. The notice of the entry of the caveat in Form l9A was issued by the land office and is reproduced in full as follows:

Borang 19A
(Seksyen 321)
Notis Mengenai Kemasukan Kaveat

Heap Huat Rubber Co. Sdn. Bhd.

Kepada ...
...
...
yang beralamat di ...
tuan punya tanah tersebut dalam jadual di bawah ini:
XXX, Pemegang Gadaian dalam # XXX Gadaian yang tersebut dalam jadual dibawah ini bagi tanah yang tersebut di dalamnya.

Ini adalah memaklumkan kepada tuan/puan bahawa pada menjalankan kuasa-kuasa yang diberi oleh Seksyen + XXX/330, saya pada hari ini memasukkan di dalam Suratan Hakmilik dalam daftar bagi tanah itu:

(a) XXX Serial: 1782/86 Jld. 239 Fol. 28A.

(b) Sesuatu XXX Kaveat Pemegang Lien atas permohonan:
United Overseas Bank Ltd.
...
...

Kaveat ini adalah menyatakan sebagai mengikat:

tanah itu sendiri/XXX yang tersebut dalam jadual tersebut itu, dan natijahnya ialah:
Sebagaimana yang dijelaskan di bawah Seksyen

...

330 KTN

...
9 Ogos 86
Pada tarikh ... haribulan ... 19 ... PTG(R)16239 9
sk:

Ho Thian Cheh & Co. Chop Sgd

Johor Bahru. ...
Pendaftar/XX
Johor
Negeri/XXX ...

l:HTC:R:153-86(59/84)

Jadual Tanah + Dan Kepentingan

Bandar/ Pekan/ Mukim	No. Lot/ Petak P.T.	Jenis dan No. Hakmilik	Bahagian Tanah	No.Berdaftar Pajakan/ Pajakan Kecil	No.Berdaftar
Mukim Bandar	Lot 241	Geran 25081	semua	tiada	tiada

Satu (1) Hakmilik Sahaja

The receipt of the above notice was denied by the applicant and it was averred on its behalf that it was only when a search was conducted on 23 February 1988 that the applicant discovered the lodgement of the lien-holder's caveat and was given a copy of the notice.

Having regard to the principles enunciated in *Eng Mee Yong v. V.Letchumanan* [1977] 2 MLJ 212 it was common ground that, as against the applicant, the burden was upon the respondent to prove that it had a right to apply for the entry of lien-holder's caveat. It was the respondent's case that the applicant allowed the respondent to be in possession of the title deed by way of a lien in respect of credit facilities granted to the applicant and in further consideration of the respondent allowing the applicant some measure of time to pay what it owed the respondent.

The basis of the respondent's right to enter the lien-holder's caveat was LKK1 and the Court was asked to determine the present application by addressing its mind to three questions in relation to this letter of confirmation, namely:

1. What was the intention of the applicant at the time of the deposit of the title deed with the respondent?
2. What was the extent of the authority of the actual depositors of the title deed?
3. Was the lien-holder's caveat valid?

It would be appropriate at this stage to refer to the essential facts averred on behalf of the respondent to establish its case.

The respondent granted credit facilities to the applicant spelt out in:

(a) the agreement dated 3 August 1982 (LKK4);

(b) the agreement dated 2 August 1983 (LKK5); and

(c) the agreement dated 1 March 1984 (LKK6).

By a letter dated 11 August 1984 (LKK7) addressed to the applicant the respondent referred to the loan facilities and drew its attention to the fact that interest on the loans amounting to S$2,023,207.07 cents had been overdue since February 1984 and also to the fact that the applicant had exceeded its overdraft facility by S$115,475.91 cents and sought the applicant's co-operation in making "arrangements to regularise" the accounts immediately. It was averred

that the applicant did not take any real or meaningful steps to regularise the accounts and the result was a letter dated 29 November 1984 (LKK8) from the respondent to its solicitors, M/s. Rodyk & Davidson, instructing them to give notice to the applicant to pay up all arrears of interest on the loans and the excess in overdraft by 15 December 1984. Pursuant to the instructions M/s. Rodyk & Davidson sent a letter of demand dated 30 November 1984 (LKK9) for the required payments to be made on or before 15 December 1984. It was averred that the applicant failed to do so and under the three agreements such failure constituted an event of default entitling the respondent by written notice to the applicant to declare that the amounts disbursed under the three agreements "shall be due and payable" and thereupon the applicant "shall immediately repay" the said amounts "with accrued interest ... " It was further averred that before the respondent could take steps under the three agreements to recover the total sum of loan disbursed thereunder together with accrued interest by way of written notice to the applicant, the latter sent its representative in the person of Michael Ng Eng Choon to plead on its behalf and specifically to request the respondent to refrain from taking any step in the said direction. It was shown that Michael Ng Eng Choon was one of the authorised signatories of the applicant and also one of its two accredited agents in Singapore as evidenced by the Certificate of Registration of Foreign Company dated 17 December 1975 (LKK10) and the statement of particulars from the Singapore Registry of Companies & Businesses dated 16 August 1985 (LKK10A). It was also obvious from the documentary evidence filed that he was closely involved in the negotiations resulting in the granting of the first two loans and the execution of the relevant agreements. Reference was made by the respondent to its letter dated 29 March 1982 concerning banking facilities addressed to the applicant for the specific attention of "Mr. Michael Ng" (LKK11); the letter from the respondent dated 4 April 1983 relating to banking facilities addressed to the applicant again for the specific attention of "Mr. Michael Ng" with the signature of Michael Ng Eng Choon confirming acceptance on the part of the applicant (LKK12); the resolution of the applicant dated 20 July 1982 naming, *inter alia*, Michael Ng Eng Choon and Ng Siew Kuan as its authorised signatories in relation to its account with the respondent (LKK13); and several specimen signatures including that of Michael Ng Eng Choon on the signature card kept by the respondent in respect of the applicant's current account (LKK14).

It was further averred on behalf of the respondent that Michael Ng Eng Choon, acting on the authority of the applicant, requested the respondent to refrain from taking action to recover full payment consequent upon the occurrence of the event of default and stated that if the respondent agreed to the request, the applicant would furnish the title deed to the said land by way of additional security in respect of the total sum due and owing by the applicant to the respondent under the three agreements inclusive of interest and the excess in overdraft and would allow the respondent to keep the title deed by way of a lien and to lodge a lien-holder's caveat if it deemed fit. It was also averred that after careful consideration, the respondent agreed to accede to the applicant's request and Michael Ng Eng Choon was so informed resulting in the handing over of the title deed to the respondent together with LKK1. About a year later the respondent lodged the lien-holder's caveat.

I considered the three questions in the order in which both learned Counsel put forward their arguments in their written submissions.

(1) ***What was the intention of the applicant at the time of the deposit of the title deed with the respondent?***

It was the contention of learned Counsel for the applicant, Mr. F.H. D' Cruz, that there was never any intention to create a lien when the title deed was deposited and Mr. D' Cruz put forward his arguments in support of his contention as follows.

(a) ***First Argument - Forbearance***

It was argued by Mr. D' Cruz that s. 281 of the NLC only allowed the creation of a lien where the title document was deposited **as security for a loan** and as the title deed was deposited in consideration of the forbearance given by the respondent to withhold legal proceedings against the applicant for the recovery of full payment consequent upon default on the part of the applicant under the three loan agreements no lien could be created because no fresh loan was forthcoming at the material time.

It could however be seen from para. l of LKK1 that the signatories on behalf of the applicant confirmed that the title deed to the said land deposited with the respondent was being held by the respondent as security for the payment of all monies and liabilities due or owing to the respondent. That the applicant had defaulted in paying arrears and interest on the loans and excess in overdraft when due was not denied. I could find nothing in the provisions of s. 281 of the NLC to prevent the respondent on the basis of LKK1 from applying for entry of a lien-holder's caveat or to suggest that that entry had to be made contemporaneously with the execution of the letter. I accepted the argument of learned Counsel for the respondent, Mr. T.C. Ho, that forbearance by the lender from insisting on repayment of the overdue loan afforded good consideration for the additional security granted so that this first argument of Mr. D' Cruz had to fail.

(b) ***Second Argument - No mention of Grant No. 25081 in GTL-1 and GTL-2***

Mr. D' Cruz further referred to the respondent's letter of offer of credit facilities dated 28 February 1984 (GTLl) addressed to the applicant making available to the applicant a revised line of credit wherein no mention was made of Grant No. 25081 as security and to the resolution of the applicant's directors of the same date accepting the revised banking facilities wherein no mention was also made of Grant No. 25081 as one of the securities and argued that this was evidence that the said land was not intended by the parties to be one of the properties to be provided as security. I however agreed with the submission of Mr. Ho that the relevant date for determining the intention was not 28 February 1984 but 25 June 1985 when LKK1 was executed which suggested that the title deed was deposited as additional security for repayment of monies due to the respondent. I did not accept the argument of Mr. D' Cruz for the applicant that having regard to para. 3 of LKK1 the title deed was deposited only for the execution of a legal mortgage covering the said land. The choice of having a legal mortgage executed or not, in my view, was entirely that of the respondent.

(c) ***Third Argument - Contra Proferentem***

Mr. D' Cruz referred to the directors' resolution GTL2 authorising the registration of a lien-holder's caveat in respect of the properties therein mentioned and argued that as there was no such mention in LKK1 and as there were blanks in the documents it had to be strictly construed and the *contra proferentem* rule would have operated against the respondent by dispelling any intention to create a lien. I found no merit in this argument as I was of the considered view that there was no real need to fill in the blanks in para. l of LKK1 because, as was pointed out by Mr. Ho, the security was for monies owing by the applicant itself and not by third parties and the same para clearly stated that the deposit of the title deed was for the purpose of securing the payment by the applicant of the monies owing to the respondent. In any event, no patent or latent ambiguity arose from the blanks and I agreed with Mr. Ho that whether there was an intention to create a lien or not could not be determined in *vacuo* but had to be determined by the written contents of the document.

In the result, my finding on the first question was that the intention of the applicant in depositing the title deed with the respondent was to create a lien in respect of the credit facilities existing at the time of the deposit.

(2) *What was the extent of the authority of the actual depositors of the title deed*?

It was conceded by Mr. D' Cruz that the applicant "has the power to do what is clearly set out in Clauses 3(0) and 78A" of its memorandum of association but he contended that the actual depositors Michael Ng Eng Choon and Ng Siew Kuan did not have the necessary authority from the applicant to act for it in executing LKK1 so that the applicant was not bound by it.

Having regard to the finding I arrived at on the first question, the next question I had to consider was whether on the documents furnished the respondent had discharged its burden in proving that the signatories of LKK1 acted as agents of the applicant in executing the document. As I stated earlier, it was signed by Ng Siew Kuan as a director of the applicant and by Michael Ng Eng Choon as an authorised signatory of the applicant. Under Article 86 the directors "may delegate any of their powers to committees of such member or members of their body as they think fit." It was clear from the language that the committee was not precluded from comprising a person who was not a director so that Michael Ng Eng Choon was qualified to be included in a committee together with the director Ng Siew Kuan. My attention was drawn by Mr. Ho to the directors' resolution passed on 20 July 1982 (LKK13) stating:

(l) that all previous resolutions regarding banking signatories in respect of the applicants' current account with the respondent "are hereby rescinded" and

(2) that the respondent was "to honour cheques, bills of exchange and promissory notes, drawn accepted or made on behalf of the applicant and to act on any instructions, or to accept any receipts or documents relating to the accounts, transactions or affairs of the company if so signed on behalf of the company" by two persons jointly from a list of 8 names including those of Ng Siew Kuan and Michael Ng Eng Choon.

Resolution No. (2) above, in my view, was of very wide import and I did not think that the *ejusdem generis* rule could in the circumstances have been invoked to confine the persons' names thereon to being mere "banking signatories" *vis-a-vis* the respondent. In my opinion, any of the two persons named would have had the authority to submit any document "relating to the accounts, transactions or affairs" of the applicant which could be acted upon by the respondent. I accordingly considered this resolution as representing to the respondent that it was fully entitled to accept Ng Siew Kuan and Michael Ng Eng Choon as authorised agents when they executed LKK1. I was fortified in so considering by the correspondence LKK11 dated 29 March 1982 and LKK12 dated 4 April 1983 relating to the credit facilities made available to the applicant by the respondent between the respondent and the applicant in the person of Michael Ng Eng Choon and by the negotiations undertaken by him arising out of the event of default and subsequent deposit of the title deed by way of LKK1 and also bearing in mind that LKK1 was signed not only by Michael Ng Eng Choon but also by Ng Siew Kuan who was a director of the applicant and also had the authority to enter into transactions with the respondent.

These facts clearly showed that they must have been accredited agents of the applicant and I did not think any of the authorities cited by Mr. Ho was needed to support this conclusion. Further, on the basis of the evidence submitted to the effect that the applicant allowed the

respondent to alter its position to its detriment in not seeking repayment of its outstanding loans on the basis of the further security it had obtained, the applicant, in my view, was estopped from denying the validity of that security.

(3) *Was the lien-holder's caveat valid?*

Mr. D' Cruz contended that the lien-holder's caveat lodged in the present application was invalid and put forward four arguments for his contention as follows:

(a) *First Argument - Lien contravened s. 433(1)(b) of the NLC*

Mr. D' Cruz argued that if the lien was created it would have been done on 25 June 1985, the date on LKK1 when it would have been in contravention of s. 433B(l)(b) of the NLC which imposed certain restrictions on non-citizens and foreign companies with regard to the acquisition of land or an interest in land and consequently s. 433C would have operated to render the creation of the lien null and void.

Mr. Ho, on the other hand, argued that a lien within the meaning of the NLC only came into being upon the entry of the lien-holder's caveat and that the deposit *per se* of the title deed by the applicant with the respondent did not create a lien within the meaning of s. 281(b) so that the provisions of s. 433B(l)(b) did not apply. I found merit in this argument because I took the view that until the application for entry was made and such entry entered no lien was created or could arise within the meaning of s. 281 as until then the title deed remained merely as a security which under the terms of LKK1 could be utilized for the execution of a legal mortgage covering the said land in favour of the respondent if so required by the respondent. I therefore found that at the time when the lien was created by entry of the caveat on 9 August 1986 the restrictions imposed by s. 433B on a non-citizen or a foreign company had ceased to apply by virtue of s. 3 of the National Land Code (Amendment) (No. 2) Act 1985 which came into force on 12 September 1985.

(b) *Second Argument - Lien contravened Contracts Act 1950*

It was urged by Mr. D' Cruz that since the creation of the lien was forbidden by the NLC, LKK1 was not enforceable because of s. 24(b) of the Contracts Act 1950 which provides that every agreement is void whose object is forbidden by law if of a nature that, if permitted, it would defeat any law. This argument, as was pointed out by Mr. Ho, was subsidiary to the first argument and accordingly failed as a result of my finding under that head.

(c) *Third Argument - Non-compliance with the Stamp Ordinance, 1949*

It was argued on behalf of the applicant that the lien had been destroyed by reason of non-compliance with the relevant provisions of the Stamp Ordinance 1949 because LKK1 which went to the root of the matter was not stamped and was therefore not receivable in evidence as it fell within the meaning of "equitable mortgage" under the Ordinance and attracted stamp duty under item 27 of the First Schedule.

Mr. Ho, whilst not disputing its description as an equitable mortgage, however showed that LKK1 was a standard document which was obviously prepared and issued in Singapore by the respondent, resident and operating in Singapore, indicating that the title deed was deposited in Singapore and contended that it could be construed as an instrument not chargeable with duty under s. 35 being an instrument falling under General Exemption 4 "relating exclusively to things done or to be done out of the Federation of Malaya." I agreed with Mr. Ho that LKK1 related merely to the deposit of the title deed outside Malaysia and therefore held that it related to a thing done outside the Federation and was consequently exempted from stamp duty.

(d) *Fourth Argument - Non-compliance with the Companies Act 1965*

Under this head the applicant's argument was that the lien was void by reason of non-compliance with s. 108 of the Companies Act 1965 requiring registration of a charge thereunder for priority purposes because the lien being an equitable charge had not been registered as required.

My attention was drawn by Mr. Ho to *Paramoo v. Zeno Ltd.* [l968] 2 MLJ 230 where it was held by the then Federal Court that the FMS Land Code made it quite clear that a charge was quite distinct from a lien in that a lien under that Code was a statutory lien and had an independent existence apart from a charge so that if a charge was avoided for non-compliance with the law, the lien was not avoided also provided it complied with the law. Suffian FJ, in referring to a somewhat similar provision in the predecessor Companies Ordinance 1940, stated in that case (at p. 232):

> Liens over land owned by a company do not have to comply with s. 80 of the Companies Ordinance, because that section applies only to charges. Charges are not liens. The charges subject to s. 80 are enumerated in subsection (2) and liens are not included in the list.

It was my considered view that the distinction between a lien and a charge exists in the NLC and *Paramoos's* case is still good law. I therefore held that a lien could not be regarded as a charge under the Companies Act so that I did not have to consider the applicability of the provisions of its s. 108.

I therefore found that the answer to the third question was in the affirmative.

In the light of the foregoing, the application was dismissed with costs.

Also found at [1992] 3 CLJ 1589